EARL G. AND ROBERT K. MURPHY

IBLA 76-193 Decided March 2, 1976

Appeal from the decision by the Missoula, Montana, District Office, Bureau of Land Management, canceling grazing lease 25077236.

Affirmed.

1. Grazing Leases: Cancellation or Reduction

A grazing lease issued pursuant to section 15 of the Taylor Grazing Act is properly canceled where the lessee has violated the terms of the lease and the regulations by subleasing lands within the area of the lease.

APPEARANCES: Earl G. and Robert K. Murphy, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Earl G. and Robert K. Murphy appealed to this Board from a decision by the Missoula, Montana, District Office, Bureau of Land Management (BLM), dated July 17, 1975, which canceled their grazing lease issued pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970).

The lease was issued for the period December 14, 1972, to December 13, 1975, as a renewal of appellants' original grazing lease MDO-207. It covered 560 acres of land in sections 24 and 26, T. 14 N., R. 4 W., P.M.M., and authorized 59 AUMs of cattle use. The lease was issued subject to all rules and regulations of the Secretary of the Interior which were incorporated by reference therein and made a part thereof.

A memorandum in the case file from the Area Manager dated November 27, 1974, indicated that he and another BLM representative had met with Bob Murphy on November 14, at which time it was learned that the latter had leased his private and BLM lands to another individual during the summer of 1974, "but doesn't know what he is going to do next year." They informed Murphy that he could lose his lease if he subleased or if the lease was not properly assigned.

In another file memorandum dated June 23, 1975, the Area Manager stated that he was informed on June 20, by a Dr. Adolf J. Kafka that 25 head of branded cattle belonging to one Frederick LaRock, which had been grazing on private and BLM leased land of Bob Murphy, had come into his pasture. Kafka advised that he would round the cattle up and hold them at his headquarters, and notify LaRock. The memorandum further stated that on June 21 LaRock and Murphy went to Kafka's ranch at which time Kafka offered to share fencing costs with Murphy to prevent cattle drift from Murphy's allotment into Kafka's allotment but Murphy refused to do this. Kafka offered to release the cattle without charge if they were not returned to Murphy's allotment, since this would only cause the trespass to be repeated, and LaRock agreed to this.

Thereafter, in accordance with 43 CFR 4125.1-1(h), the BLM issued a notice dated June 30, 1975, allowing the Murphys 15 days from receipt thereof within which to show cause why their grazing lease should not be canceled in whole because grazing of livestock not owned or controlled by the lessee on the leased area is prohibited, citing 43 CFR 4125.1-1(g) and (h). The notice reminded the lessees of the discussion with Bob Murphy by the two BLM representatives on November 14, 1974, and of the recent trespass of 25 head of LaRock's cattle on Kafka's grazing lease from the Murphys' grazing lease.

Earl G. Murphy replied to the notice to show cause on July 7, 1975, stating:

> As discussed with your field representative last fall I am in the process of preparing a lease with Mr. F. J. LaRock which will expire April 15, 1978 and would like to work out a sublease to him for that period on the B.L.M. land.
>
> If Mr. LaRock's cattle were grazing on B.L.M. land it was not intentional. As for the cattle corraled by Mr. Kafka it is quite possible they came off our private land or State land which Mr. LaRock has subleased or for that matter they could have been rustled off our range.
>
> In any event I would appreciate your help with a sublease for Mr. LaRock. * * *

BLM then issued its decision of July 17, 1975, from which this appeal was taken. The decision canceled the grazing lease because livestock not owned or controlled by the lessees were grazed on the leased area in violation of 43 CFR 4125.1-1(g) and (h) of the grazing

regulations. It stated the lessees' response to the show-cause notice indicated that LaRock's cattle were using the grazing area, and that they had submitted no evidence or facts which would support a continuation of grazing under the subject lease.

Appellants offer no reasons showing how the decision below is in error. They mentioned several matters which are not responsive to the issue regarding LaRock's cattle and in the following excerpt from their appeal, they failed to deny that LaRock's cattle have used their grazing lease, and more or less admit that their desire all along has been to sublet or assign their lease to LaRock:

> During November 1974 Earl Murphy discussed our B.L.M. grazing lease with Mr. Wilkie and Mr. Pickett [BLM Area Manager], field representatives for the B.L.M. At this time it was agreed we would request an assignment of our grazing lease #25077236 to our lessee. Because of the uncertainty of the cattle business Mr. LaRock did not decide to lease our property until late this spring. At the time of Mr. Fields [BLM District Manager] letter dated June 30, 1975 Earl Murphy was in the process of preparing the lease and obtaining an assignment of grazing rights for our state and B.L.M. leases, however; Mr. Fields would not assign the B.L.M. grazing rights as requested in our letter dated July 7, 1975, but decided our lease should be cancelled. At the present time Mr. LaRock does not have a formal lease on our property but does have an assignment of our state grazing rights #3222 which expires on April 15, 1978.

[1] Under the circumstances, the BLM was justified in canceling the lease. Section 3(e) of appellants' lease provides:

> The authorized officer may terminate and cancel this lease upon the lessee's default in the performance or observance of any terms, covenants, and stipulations hereof, or of the regulations of the Department of the Interior now or hereafter in force * * *.

Section 3(f) of the lease also provides:

> Assignment of this lease will not be recognized by the United States without proper application and written consent of the authorized officer.

The governing regulations 43 CFR 4125.1-1(g) and (h) provide:

> (g) Subleases. No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.
>
> (h) Cancellation or reduction of leases; show cause. Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations * * *.

Therefore, since the lessees either subleased to LaRock or merely permitted his cattle to graze on the lease area, the lease was subject to cancellation. See Coronado Development Corporation, 19 IBLA 71 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge